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ALTERATIONS

WHICH MAY BE PROPOSED

In the LAWS for regulating the Election of
MEMBERS of PARLIAMENT for
Shires in Scotland.

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ADVERTISEMENT.

HAVING given notice of an intention to bring the important subject, to which the following hints relate, under the consideration of Parliament at an early period of the next Session, and being very desirous of receiving assistance from every individual, who has paid attention to so interesting a matter, it was judged proper to draw up the following short State of the principal points which are likely to become the topics of discussion.

Those who may be inclined to favour the Author with their thoughts upon the subject,

iv. ADVERTISEMENT.

subject, are requested to transmit their sentiments respecting it, directed to him, either at Thurso, North Britain, or at Whitehall, London.

S T A T E, &c.

THE interposition of the Legislature, to ascertain the right of electing Representatives for Shires in Scotland, in a clear and indisputable manner, has at last become indispensable. The laws which regard that important privilege, *as they now stand*, are in the highest degree uncertain, are variously interpreted by the Courts of Law, and are liable to much abuse. It is impossible to say, at present, in whom that right is legally vested. A late attempt to have the matter in some degree cleared up, has unfortunately proved abortive; and, instead of answering the beneficial purposes thereby intended, has thrown it into still greater obscurity. The enormous expence attending

tending such litigations, precludes all hopes that the matter will ever be judicially settled ; and nothing but the power of parliament can furnish any well-founded prospect of redress.

But, though all agree that some new regulations, or at least some explanation of the old law, have become absolutely necessary ; yet, when the specific proposition to be brought forward becomes at any time the subject of discussion, a very striking difference of opinion arises. One man contends for great and bold——another for gentle and moderate innovations ; one is urgent for a limited——another for a numerous body of electors ; some are for rooting out every remnant of the feudal system, and extirpating all votes on superiorities at once ;——whilst others assert, that the law cannot now be materially altered, and that such votes ought still to be retained, under certain restrictions.

Amidst

Amidst these jarring opinions, and that clashing of political and of private interest, unavoidable on such an occasion, it is evident that something must be done. It is of essential importance to the nation in general, that the Representatives of so respectable a part of the community as the landed interest of Scotland, should be as wisely and as fitly chosen as circumstances will permit.—Care, at the same time, must be taken, that, in the fervour of political reformation, the rights of private property should not be wantonly sported with; and that the redressing of one grievance, or the extirpating of one abuse, do not prove the means of introducing others equally noxious and exceptionable.

In discussing this important subject, there are three points which it proposed very briefly to consider; namely, I. What the laws respecting the election of Members for Counties in Scotland originally were. II. What they now are. III. What they ought to be for the future.

I. *Ori-*

I. *Origin of County Representation in Scotland.*

IN Scotland, as in the other feudal kingdoms of the North, every individual who held lands immediately of the Crown, was bound personally to attend the great Councils assembled by the Sovereign ; and, in ages of turbulence and barbarity, when the most powerful Barons felt themselves insecure in their fortified castles, furrounded by a body of warlike and faithful vassals ; and at a time, when, from the scantiness of their pecuniary resources, they could ill afford the expence of a distant journey, or the aids which a monarch, on such occasions, generally required or expected from his people ; attendance in parliament was naturally accounted one of the most burdensome services to which the vassal of the crown could be made liable.

But, if this burden was severely felt by the greater and more powerful Barons, those who held

held smaller and less valuable possessions from the Crown, must have been in a still higher degree affected by it. Some time, however, elapsed, before a grievance, of which that description of men had just reason to complain, was fully and legally redressed. It is probable that a practice had gradually crept in, of appointing attornies or deputies to act for those who had some plausible excuse for their absence. It was afterwards enacted by the seventh Parliament of James I. of Scotland, held *anno* 1427, 'That small Barones and Free Tennentes, neid not to cum to Parliaments nor general counceils, swa that of ilk Schirefdome, their be sent, chosen at the head Court of the Schirefdome, twa or mae wise men, after the largeness of the Schirefdome.'

This new regulation being in a great measure left optional, was not uniformly observed. The smaller Barons and Freeholders were still liable to be summoned, and might be punished with heavy fines, if they either neglected to appear personally, or to send Commissioners in their stead. It was therefore enacted, in the Cap. 75.

fourteenth Parliament of James II. held *anno* 1457, that no Freeholder should be constrained to come personally to Parliament, unless such as were possessed of twenty pounds of rent in land. By another Act, passed *anno* 1503, this exemption was extended to those who were not possessed of a hundred merks of new extent, unless the King specially required their being present; and, lastly, by the Act of 1587, it was finally declared, that the appearance of the Commissioners of Shires in Parliament fully relieved the small Barons and Freeholders from their obligation of attendance. The same Act also, for the first time, made a specific declaration as to the right of voting and the mode of election; it being enacted, that the right of election should be vested in those Freeholders who were possessed of a forty shilling land holding of the Crown, and had their actual residence in the shire; and that the said election should take place at the first Head Court after Michaelmas yearly, or at any other time that the Freeholders may choose to assemble, or that the Crown may please to appoint. It was also enacted, that the Lords of Council and Session

Session shall yearly direct letters for convening the Freeholders to choose Commissioners for the ensuing year, and for laying on the taxes necessary to defray their expences in coming to Parliament. By this Act it was further directed, that the Commissions should be sealed and subscribed by at least six of the Barons and Freeholders; and by another Act, passed *anno* 1597, it was declared, that no Baron should be received as a Commissioner, unless he produced a sufficient commission, granted in full convention of the Barons, and subscribed by the clerk and a great number of those assembled.

Such was the old law respecting the election of Representatives for counties in Scotland. The privilege of voting was restricted to those, who held lands of the Crown to the extent of forty shillings *per annum*; and the regulations as to the mode and the right of election, were as yet few and simple; a seat in Parliament not having yet become an object of political ambition, or the means of acquiring power or political influence in the government of the country.

II. *What the Law now is.*

THE mode that now exists, of electing Representatives for Counties in Scotland, will appear by shortly stating, 1. The laws that were enacted from the Restoration, *anno* 1660, to the Union. 2. From the Union to the present time. 3. The interpretation given to those laws by the courts of justice.

Cap. 35.

1. The first Act posterior to the Restoration upon this subject passed *anno* 1661. It is therein stated, that debates had occurred concerning the persons who ought to have votes in the election of Commissioners from the several Shires of the Kingdom to Parliament, and that it was necessary for the good of his Majesty's service, that the same should be ascertained for the future. It was therefore enacted, that, besides all heritors who held a forty shilling land of the King *in capite*, all heritors, liferenters, and wadsetters, whose lands held of the King, and whose yearly rent amounted to one thousand pounds

pounds Scots, should be capable to elect or be elected Commissioners. This was the first introduction of liferenters and wadsetters, and of persons who were not possessed of forty-shilling lands, to the privilege of voting.

But the basis, on which the right of electing members for counties in Scotland now rests, is the act passed *anno* 1681. Among the various regulations therein contained (to be properly acquainted with which the act itself must be consulted), it is particularly declared, that none shall have a right of voting in the election of Commissioners for shires, but those who shall stand publicly infest in *property* or *superiority*, and are actually in possession, of a forty-shilling land of old extent holding of the Crown, or of lands liable in public burdens for his Majesty's supplies, to the extent of four hundred pounds Scots of valued rent. It was farther enacted, that all persons having a proper wadset of lands, of the holding and extent or valuation above mentioned, together with heirs apparent, who were in possession in virtue of their predecessors infestment, also liferenters, and husbands for the free-

freeholds of their wives, should have a right to be enrolled.

This was the first law, in which votes on the *superiority* of lands merely, are explicitly mentioned and recognized by the Legislature * ; and here it may be proper to give some explanation of the nature of these votes, and some account of the meaning of these legal terms, *liferent*, *wadset*, *old extent*, *valued rent*, and *infestment*, which render the subject obscure and even unintelligible to those who are not in some degree conversant with the laws of Scotland.

A *superior*, in the political sense of the word, is a person who holds lands immediately of the King, and of whom those lands may be held by some other person. He is entitled to demand a charter or deed of confirmation from the

* It can hardly be doubted, that votes on superiority were held legal prior to the act 1681. But the holders of superiorities in those times were in general masters of considerable landed property in the counties in which they claimed the privilege of voting.

Crown,

Crown, and to give a charter or deed of confirmation to the person who is his vassal. The superior, by his grant to the vassal, was not entirely divested of his right to the lands. It continued unimpaired, excepting in so far as the same had been specially conveyed. Nay, according to one of the ablest feudalists (Cujacius), the vassal had merely a *jus fruendi* or a species of *usufruct* in the estate, whilst the real property remained with the superior; consisting in the various services due by the vassal, and the various rights and emoluments which the superior was entitled to enjoy*.

Prior to the Union, and perhaps to the 16th of George II. there is every reason to believe that the right of superiority was a real right, fully entitled to any privilege which the law might think proper to confer. But of late years it has become a common practice for persons who are the immediate vassals of the Crown, to create what is known under the name of nominal and fictitious or confidential votes.

* See Erskine's Institutes, fol. edit. p. 181. and 212.

They

They ingeniously contrive to interpose a number of superiors between themselves and the Crown, each of whom, if possessed of a legal qualification in point of the extent and valuation of his estate, has a title to vote for the representative of the county. The small number of electors in Scotland gave a spur to the activity and invention of those, who were possessed of that species of property which alone could give a title to elect or be elected. Such votes were legal, and it was plausibly enough contended, that extending the right of voting was not inconsistent with the principles of a free constitution, and that augmenting the number of voters could never diminish the natural and essential rights of a free people.

Such superiorities, being merely created for the purpose of acquiring political influence, have been thus described, "a bare feignory, " independent of the usufructuary interest or " beneficial property in the land; the rent-service or quit-rent of which is in general a mere " trifle, and seldom required from the vassal by " the

"the superior*." They have been of late, perhaps, too harshly treated. At least, whilst the burgage tenures of England remain unimpeached, the superiority votes of Scotland, even according to the most recent improvements in that species of political manufacture, can never want countenance and example.

A *lifereit* is an estate for life, in which the holder has no interest except merely to receive, during his life, the annual profits which it may produce; with the power, however, of alienating those profits to another. It is at present the usual mode of creating superiority votes, as the estate or property subject to the *lifereit*, with the burden of that incumbrance, may be continued in the title-deeds of the real proprietor, if he is in the fee, as is generally the case; and, at any rate, the death of the *lifereiter*, is a complete extinction of any right that has been granted.

A *wadset*, is a mode of security, which, though formerly very common in Scotland, has for

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* Douglas on controverted Elections, vol. ii. p. 359.

some time past gone into disuse. It was a species of mortgage, of which there were two kinds, *proper* and *improper*. In a *proper* wadset, the mortgage took the actual possession of the lands as a security for the money he had lent, and received the rents and profits thereof in lieu of interest; whereas, when the wadset was *improper*, the mortgagee was accountable for the surplus of the rents, if they exceeded the legal interest of his money, and was entitled to demand an addition, if they were found inadequate.

The *old extent* was an ancient valuation of the lands of Scotland, according to which the subsidies granted to the Crown were formerly levied. It continued for a long period of time the common rule for proportionating the Land-tax; and hence it was supposed to furnish the best means of ascertaining, who ought to have a right of electing the Representatives of the landed interest to Parliament.

The *valued rent* is a more recent valuation, and in fact is the rate, according to which the Land-tax in Scotland is levied at this time.

Infestment,

Infestment, implies a complete feudal right, being a formal and legal act of seizing the possession of an estate, in execution of a warrant for that purpose, contained in a charter from a legal superior, whether the Crown or a subject.

Having thus endeavoured to explain the terms which are the most difficult to be understood, in the laws of Scotland, respecting county elections, it is next proper to state the regulations which have been enacted since the Union, on that important subject.

2. The laws of England and Scotland, in matters of election, being different, and the number of representatives very unequal, from a desire of preventing rash and hasty innovations in its old constitution, which the weaker kingdom might naturally apprehend, it was declared at the Union, "That none should be capable to elect or be elected, to represent a shire or borough in the Parliament of Great Britain, except such as are now capable, by the laws of Scotland, to elect or be elected Commissioners to the Parliament of Scotland." To what extent

Act 1707, extent this important prohibitory clause ought to be carried, will be the subject of future discussion.

The first step taken by the Legislature after the Union, respecting county elections in Scotland, was to check the practice of making nominal and fictitious votes, which had become not a little prevalent.

12 Ann.
cap. 6.

For that purpose it was enacted, that no person should be entitled to claim the privilege of voting at any election, who had not been legally infest for twelve months prior to that election; and an oath was engrossed in the Act (known by the name of the first Trust Oath), which if any Elector refused to swear and to subscribe, he was declared incapable of voting or being elected.

The Acts passed in the seventh and sixteenth years of George II. are next entitled to attention.

7 Geo. 2.
cap. 16.

By the first, an alteration in the Trust Oath, above alluded to, was introduced; and every Freeholder

Freeholder was compelled to swear, at the requisition of any person upon the roll, previously to his being entitled to vote, that his right to the lands and estate on which he claimed to be enrolled, was not nominal or fictitious, created or reserved in him, in order to enable him to vote for a Member to serve in Parliament; but that the estate thereby apparently vested in him, was a true and real estate for his own use and benefit, and for the use of no other person whatsoever. By the second Act, a variety of regulations were introduced, which it would be tedious to enumerate; but, though great precaution was then taken to regulate every step in the election of Members, both for Counties and Boroughs in Scotland; yet, since passing that Act, a number of new difficulties have arisen, for which, in time, some remedy must be provided*.

16 Geo. 2.
cap. 11.

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* Some of these points have been settled, so far as the decision of a Committee of the House of Commons can go; but those decisions ought to be reduced into one law, in order to remove any temptation for useless litigation or political contest.

3. The interpretation given to these Acts by the Courts of Law, is the third point to be considered; and it is one of the strongest objections to any farther alteration in the laws above mentioned, that, after they have so often undergone judicial discussion, have been expounded at an enormous expence, to the landed interest of Scotland, and long acted upon as if they had been unalterable, the Legislature should again overturn a fabric originally erected under its own authority, and afterwards sanctioned by the very Judges who are the interpreters of the laws.

The principal questions which have been the subject of contest before the Courts of Law, were, 1st, Whether a bare right of superiority, *recently created*, was sufficient to entitle a claimant to be put upon the roll? 2d, Whether any Freeholder, who had subscribed the oath specified in 7. Geo. II. cap. 16. could be afterwards judicially interrogated regarding the nature of his right, whether it was real, or nominal and fictitious?

A mere right of superiority, by the act 1681, was unquestionably a sufficient title for enrollment. But it came to be a very nice point, how far a vote, evidently created for the purpose of acquiring political influence (that is, where the separation of the superiority from the property was a recent transaction), could be legally sustained. In such questions, the Court of Session, who, in consequence of what is called their *nobile officium*, exercise a right of determining, from the spirit and intention, as well as the words of the Legislature, were inclined to decide against these political creations. The House of Lords, on the other hand, adhered to the letter of the law, and found such votes legal and effectual.

The second point, that which respected the Trust Oath, was of equal importance. It has been plausibly enough contended, that, after Parliament had applied its wisdom in drawing up the particular form of an oath as a proof of the legality of a vote, any farther evidence was unnecessary, and could not with justice be demanded. Some doubts have been lately thrown out

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out as to the justness of this species of reasoning by the noble and learned Lord, who presides with such distinguished ability on the woolsack. This, therefore, is a point which, in the event of a new Act, must be specially provided for, and finally determined.

The most important regulations respecting County Elections in Scotland, being thus shortly stated, the result is, that the right of voting, *as the law now stands*, is vested in those who are possessed, either in property or superiority, of a forty shilling land of old extent, or four hundred pounds Scots of valued rent, holding of the Crown; who have been in possession of that species of estate for four months, or claim as husbands or heirs apparents, and who take the oath (if tendered to them) as a proof of the reality of their right. When it is considered how few landholders are included in this description, and to what a very small number indeed the right of voting would be restricted, were superiority votes to be entirely abolished, it will not probably be much regretted, that the subject is again to come under the consideration of Parliament.

III. *Alterations for the Consideration of the Legislature.*

Before this part of the subject be entered into, it is proper to premise, that the leading principle of the law of Scotland, regarding the election of county members, is this, *That the landed property in the county (and not the persons of the proprietors), such property holding of the Crown, and, either by an ancient or a modern valuation, being liable to a certain rate of taxation, for the general exigencies of the state, and for other public expences *, should be represented in Parliament.* This great and fundamental principle, unless the old constitution of Scotland were to be totally overturned, must invariably be kept in view.

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* The expences of building churches, bridges, &c. depend upon the valued rent of each proprietor.

1. The first question to be considered is whether the property thus to be represented, ought to hold *exclusively* of the Crown, or whether the vassals and sub-vassals of subjects ought also to have the privilege of voting.

Cap. 19. An extension of the liberty of voting to those who do not hold immediately of the Crown, would certainly introduce a new principle into the constitution of Scotland, of which there has been as yet but one example, that of the county of Sutherland. The circumstances of that shire, however, were of so peculiar a nature as to justify that exception. In an act passed *anno* 1641, it is stated, that there were but two heritors in that county who held their lands of the king; and it was therefore enacted, That the fees or wages of the Commissioners for that shire should be levied from all the heritors, feuers, liferenters and freeholders therein, whether holding of his Majesty, or of any other superior. The vassals of the Earl of Sutherland being thus compelled to contribute to the expence of sending a Commissioner to Parliament, it was natural for them to claim a right of voting

ting at his election. But that privilege was never fully and legally ascertained until the 16 Geo. II. when it was declared, That persons Cap. 11. should have a right to vote in that county who were infeft and possessed of lands liable to his Majesty's supplies, and other public burdens, at the rate of L. 200 Scots of valued rent, of whatever person the same might be held; but that the same lands should not afford double qualifications. For if the land was held of the King, the King's vassal should only be entitled, and not his vassal or sub-vassal; but if the King's vassal should be a peer, or other person or body politic, who by law were disabled to elect or be elected, the proprietor of the land should be entitled.

It has been proposed to extend this law over the kingdom at large; and it is certain, that if votes on superiority merely, were to be considerably restricted, it will be necessary to introduce some new description of persons, to keep up a sufficient number of electors; and none are better entitled to such a privilege, than those who are real proprietors of landed property

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ty (sometimes even to a considerable extent), though in consequence of the tenure by which that property is held, they are not immediately connected with the Crown.

It is not, however, to be imagined, that holding of the Crown, is a privilege without a burden, or that vassals can be put on a footing with superiors, without some public or private compensation to the latter. The expence of making up titles from the Crown, is at present very great. It is also a branch of the revenue of the Sovereign, to which inferior vassals do not contribute; and as establishing their right, except when they first purchase an estate, is not attended with much expence; if, for the sake of the general interest of the country, superiors are to be put on the same footing with their vassals, in regard to political power, justice demands that they should be put on a similar footing in the expence to be incurred, when their privilege of voting is to be legally established.

2. The next question is, whether the property and superiority of an estate ought always to be

be conjoined, in order to entitle a person to vote; or, whether a bare right of superiority should be accounted a sufficient qualification.

To those who have not traced the constitution of Scotland to its first principles, it must appear to be the height of absurdity, that an individual, possessed of perhaps L. 1000 Sterling *per annum*, because his estate holds of a subject, should be incapable to elect or be elected, whilst another, holding of the Crown, lands valued at L. 400 Scots *per annum* (but from which he does not receive a single penny of real profit) should be entitled to both these privileges.

By the original constitution of the Parliament of Scotland, the attendance of the sub-vassals of the Crown was neither required nor admitted. They were supposed to be fully represented by their over-lords or superiors. Being thus originally exempted both from the burden of coming to parliament, and the expence of sending and maintaining representatives there, they are now, with some degree of justice, excluded from

Wight,
p. 203.

from a privilege, which they formerly rejected, and which, in former times, they would have considered as in the highest degree burdensome.

If, however, vassals should be admitted to the privilege of voting, it does not follow, of course, that votes on superiority merely, should be entirely prohibited. They were completely established before the Union by the act 1681, are confirmed by the articles of that treaty, and, without strong reasons, or some adequate compensation to the possessors, cannot now be abolished.

As this is the most delicate, and perhaps the most important part of the present subject, it may be proper to state the different plans regarding it, which the Legislature may take under its consideration.

The first plan that occurs is, That the public should purchase the rights of superiors in Scotland, in the same manner as the heritable jurisdictions were acquired, with a view of putting

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an end to any remains of the feudal system still remaining in that country. No right of superiority, however, to be purchased, that did not exist prior to the Union.

Another mode might be, to empower the vassal to compel the superior to dispose of his right of superiority, according to the estimation of a jury, or the award of the Court of Session, and at the price which they might think proper to determine.

A third mode to be considered, is, that of restricting the privilege of superiority votes, to those which subsisted prior to the Union, and which, by that treaty, were undoubtedly confirmed. By the 16th Geo. II. it was enacted, that no person shall be enrolled or entitled to vote, in respect to property of forty shilling land of old extent, unless such old extent is proved by a retour, of a date prior to the 16th September 1681; and that no division of the old extent made since that period, shall be sustained as a sufficient evidence of the old extent. Thus the Legislature has already furnished an example

example of a distant æra being fixed upon posterior to which a right should not be effectual. In the present case, perhaps, a similar line (fixing the æra at the Union) ought to be followed. Those who have disjoined, at a considerable expence, the property from the superiority of their estates, may have some reason to complain; but if such as are now enrolled, under the authority of the present law, were suffered to remain until their rights be extinguished by death, or by such an alteration of circumstances as would otherwise render them incapable of voting, such complaints would be no longer well founded; and it is to be considered, that, by the law as it now stands, if no complaint be exhibited against any Freeholder within four kalendar months after his enrolment, he is entitled to continue upon the roll (even if his vote is palpably illegal), until an alteration of circumstances, sufficient to justify his being struck off, is clearly proved. Hence the Legislature will probably be cautious in disqualifying at once so many persons, who, according to the strict letter of the law, are legal Electors,

16 Geo. 2.
cap. 11.

Electors, and whose rights were thus declared to be permanent and indisputable.

3. Another question, entitled to the most deliberate consideration, is, whether means must not be fallen upon, to give persons of extensive property, a legal mode of exercising that weight and influence, in the legislation and government of the country, to which they are entitled, from the extent of their possessions, and the taxes which they pay. Whilst any difference in point of rank and fortune exists in society, it will hardly be admitted that persons of great and small property ought to be put upon an equal footing of political power. The wealthy will ever claim, and with some degree of justice are entitled to expect, a share in the government of the country, in proportion to the amount of their public contributions; and that share they may either enjoy explicitly and avowedly, by an express declaration of the law in their favour, or circuitously, through the medium of those, over whom they may be supposed to have some natural influence.

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The best mode of giving extensive property a proportionate weight in elections, according to some ideas lately thrown out, is said to be, the permitting every proprietor to have as many votes, as his property could divide into legal qualifications, or, in other words, that the system of voting in the East India Company should be adopted in Scotland. This plan, however, except in the single instance above mentioned, or in other corporate commercial Companies, evidently runs counter to every established principle or usage of voting at elections. By an Act of the Scotch Parliament, passed *anno* 1587, double votes were expressly discharged; for an abuse having crept in, by which the same person claimed more than one vote in Parliament, as being, perhaps, both a Churchman and a Baron, it was enacted, that each Member of Parliament should hold himself to the title which he usually assumed, and should content himself with one vote. Besides, if means can be fallen upon, of giving to property weight in elections, without the odium of seeing one or two individuals outvoting, by the extent

Cap. 33.

extent of their possessions, all the other legal Electors, surely no man will insist upon the introduction of a principle, which, in the exercise of it, must be humbling to persons of small property, and irritating to a free people.

Another mode entitled to consideration is, whether leaseholders who have been for twelve months in the actual possession of a farm of 50 *l.* 100 *l.* or 200. *per annum*, either of real or of valued rent, and whose lease continues during their life, or for the life of another person *, should not be permitted to vote at county elections. Persons renting such farms may, from

* It may be said, that if leaseholders for life are to be permitted to vote, why should not the holders of a lease for a long term of years have exactly the same political privilege? To this it may be answered, That a lease for a term of years is liable to fraud and evasion; that its uncertainty must always have too strong a bias upon the mind; and that gratitude for favours conferred, and not terror for injuries to be apprehended, is the only proper and genuine source of political influence.

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the independence of their tenure, be well supposed to have a will of their own, and, from the value of the stock which they require, must be materially interested in the public prosperity, and possessed of sufficient property to entitle him to vote at an election. Public policy requires that a mode of letting landed property, so favourable to agriculture and improvement, should, by some means or other, be encouraged; and that a regulation which has proved so beneficial to England, should be extended to North Britain *.

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* One would be apt to imagine, from the beautiful theory which Blackstone gives of the constitution of England, that comparative wealth and property are entirely disregarded, in county elections, in that part of the island, and that no man, however great or wealthy, or however artful he may be, can have a larger share in such elections, than the poorest freeholder. Fortunately the fact does not coincide with the theory. Men of large possessions do enjoy, in a very extensive degree, an influence in such elections. To acquire that influence, their estates are let at a rate, which otherwise they

4. The next question to be considered is, what qualification should be required from those persons, on whom the right of voting is to be conferred.

The present qualification of a forty shilling land of old extent, or 400 *l.* Scots of valued rent, is undoubtedly too high, if any extended representation of the people be proposed. In some cases, particularly in fishings, the value of which has greatly increased, 400 *l.* Scots of valued rent may yield perhaps in real rent 1000 *l.* Sterling *per annum*. But at an average, 400 *l.* Scots is equivalent to from 100 *l.* to 200 *l.* Sterling *per annum*. Some have suggested that the qualification of a freeholder, and that of a commissioner of supply for levying the land-tax, should be the same. By this rule, all proprietors or liferenters of lands, valued to the

they would not have agreed to; and their farmers are thus enabled to carry on those improvements, which render the agriculture of England a pattern and example to the rest of Europe.

extent

extent of 100*l.* Scots, would be entitled to vote. This perhaps may be accounted too great a change at once; and it may be thought that the qualification which now takes place in the shire of Sutherland, namely, that of 200*l.* Scots, would be sufficiently low for the present. As to any innovation which might be proposed, of introducing the real rent, instead of the valued rent or old extent, such an idea is so inconsistent with the ancient laws and usages of Scotland for ages past, and confirmed solemnly at the Union, that any alteration of it, in regard to freeholds, has now become impracticable.

5. No point will require to be more seriously discussed, than that which relates to the oath to be put to freeholders, suspected of claiming on nominal and fictitious rights, and how far, after an oath has been actually taken by the freeholder, any farther examination into the validity of his title ought to be permitted.

The multiplication of oaths, and a consequent disregard for that species of solemn affirmation,

vation, has been often justly complained of. Where such oaths have been required by statute, contrary to the natural rights of mankind, and to the natural bias and spirit of the public, they have ever proved feeble and ineffectual barriers, except to those, who, from the purity of their principles, and the excellence of their private character, are best entitled to the public favour and attention. Hence every idea of policy and of justice demands, that they should be as seldom, and as cautiously made use of as possible.

If these principles are just, it is surely also requisite, that the oath required should be drawn up in the clearest and plainest words, and that the intention of the law should be as completely explained, as the collective wisdom of the Legislature can devise. *Misera est servitus*, says the Roman law, *ubi lex est vaga aut incognita*. When the laws are loose and uncertain, the interpreters of them may exercise a species of judicial tyranny over their fellow-subjects, at which the spirit of a free country must revolt.

revolt. It is in this case a species of an inquisition peculiarly exceptionable, because a person may be found guilty, not for an improper action, or the use of an improper word, but for misconstruing the words and expressions which others have made use of, or which they may chuse to understand in a different acceptation.

The oath which, at present, may be put to those, who claim a right of voting at an election for a county in Scotland, seems, in particular, to require revision. The person must swear, that the estate is not created, in order to enable him to vote for a member to serve in Parliament, as if it were contrary to the fitness of things, and the strict duties of morality, for any one to acquire a title to vote for a representative ; or for any individual, who possessed more than was necessary for his own qualification, to bestow the remainder on a friend, on a near relation, nay, on a brother or a son.

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At present, the oath in question is not only thought essential to be retained, but it is also said, that a court of justice, before whom the legality of a vote is to be tried, may farther put special interrogatories to the person whose right is contested. It is hoped, however, if a new law is to be passed, that either the oath, or the right of putting questions afterwards to the freeholder judicially, will be abandoned ; or, if interrogatories are to be allowed, that some idea of their nature and tendency will be ascertained by the Legislature, and not left to that endless litigation and uncertainty, which must otherwise arise, respecting the legality or fitness of this or of that particular question.

6. The last material point for public discussion, on this important subject, relates to the propriety of permitting the eldest sons of Peers to elect or be elected.

As this question has lately come under the consideration of Parliament, and is again likely to be brought forward, it is not intended to anticipate what may be urged, with more ad-

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vantage

vantage and propriety, at another time. That such a proposal is contrary to the Articles of the Union, or at least to the construction put upon these articles by the very framers of them, is generally acknowledged. But it may be said, that, as it is now proposed to change, in different respects, the old constitution of Scotland, no good reason can be assigned, why this difference in the political regulations of the two kingdoms should continue.

On this subject it is to be remarked, that there is a very essential difference between the admission of a new set of people, such as vassals, persons possessed only of L. 200 Scots of valued rent, leaseholders, and the like, who were not originally in the contemplation of the laws and constitution of Scotland, and admitting persons whom those laws and that constitution have expressly excluded. And, in addition to what has been urged formerly upon the subject, it may be justly inferred, that an express prohibition

Cap. 35. was understood to be contained in the act 1661. It is therein declared, that *noblemen*, and their vassals, shall not be capable to elect or be elect-
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ed Commissioners to Parliament. It is well known, that the eldest sons of Peers were *quasi* Peers of the realm, had a precedence allotted to them, enjoyed by their birth a privilege of sitting in Parliament, and in ancient times were allowed to sit and vote as proxies for Peers *. There is every reason, therefore, to imagine, that they were included under the general description of noblemen in the above prohibition.

With regard to the question, how far any material alteration in the mode of electing the representatives for Scotland, can take place, since the Union, and the emphatic clause formerly mentioned, it is proper to remark, that such a bar could only be intended, and can only

* Spottiswood on Scotch Elections, p. 49. ; Wight, p. 296. ; See also Wight, p. 210. and 468. ; from which it appears, that, while the Shire of Kinross was entirely possessed by the Lords Morton and Burleigh, it sent no Commissioner to Parliament ; whereas their eldest sons would probably have been sent, had they been eligible.

ly be effectual, against a rash and hasty innovation ; but ought not to stand in the way of alterations for the evident advantage of North Britain, founded upon the principles of the old constitution of that country, or called for by the people.

Cocclusion.

The reader will easily perceive, that the preceding hints are merely intended to lay the foundation of a system, and not to explain a system already formed ; to draw forth the opinions of others, and not to state the sentiments of the Author. His object and intentions are, early next Session of Parliament, either to move for the appointment of a Committee to take the subject into consideration, or to propose a plan the most likely to be useful to the public, and acceptable to individuals, that any exertions in his power can produce.—For that purpose, no pains, on his part, shall be wanting ; no means of procuring assistance shall be rejected, nor any decided opinion formed, whilst there is any probability of procuring new lights, or additional information. He trusts that his countrymen will excuse any appearance of presumption

tion he may have been guilty of, in stepping forward on such an occasion; and he flatters himself, that those who have bent their attention to the subject, will favour him with their assistance, from the great legal and political Oracles of the Houses, to the retired individual, who, though at a distance from the busy and turbulent scenes of popular Assemblies, feels himself warmly and deeply interested in every thing that can promote the general welfare and interest of the community.

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